

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4420 of 1997

with

FIRST APPEAL No 4421 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

AVDHOT AUTO ENTERPRISES

Versus

BHARUCH MUNICIPALITY

Appearance:

MR BS PATEL for Petitioner

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE C.K.BUCH

Date of decision: 17/02/99

ORAL COMMON JUDGEMENT [PER :R.K.ABICHANDANI, J]

These two appeals are directed against the common judgment and order dated 9.12.1996 of the learned 2nd Jt.

Civil Judge (S.D.), Bharuch in Special Civil Suit Nos. 81/90 and 82/90 dismissing the suits. The appellant-plaintiff and others had sued the respondent Municipality seeking a direction that the Municipality should complete the construction of the shop in question and hand over the same to the plaintiffs after getting title over the land on which the building was constructed cleared and getting requisite permission of the State Government and for damages on the basis of 21% interest per annum for the period from 21.6.1988 up to 20.2.1990 on the amount which was paid by the plaintiff-appellants. The appellant of First Appeal No. 4420/97 had, on this basis, claimed damages to the tune of Rs. 1,59,203-00 in Special Civil Suit No. 81/90 whereas in Special Civil Suit No. 82/90, the plaintiff- appellant of First Appeal No. 4421/97 had claimed damages of Rs. 76,000-00.

The trial Court, on the basis of the evidence on record, came to a finding that the plaintiff-appellants failed to prove that any assurance was given at the public auction to the bidders to the effect that at the time of handing over the possession of the shop, the title of the land on which the building was constructed, would be got cleared. It was also held that the time was not the essence of the contract. On the issue of damages, the Court held that the appellants were not entitled to any damages.

The learned counsel appearing for the appellants strongly contended that on 21.6.1987 when the public auction was held for the shops which were to be constructed in a shopping centre, one Mr. Vanza who was at the relevant time "Daroga" in the Municipality, had given an assurance on behalf of the Municipality that the title of the property would be got cleared. It was contended that such assurance given by Mr. Vanza was binding on the Municipality and since land on which the shopping centre was constructed belonged to the State Government, until the land was transferred to the Municipality, the title over the land was not acquired by the Municipality and the appellants were, therefore, entitled to insist on the Municipality to get its the title perfected while handing over the possession of the shops. It was further argued that the shops were not constructed within the stipulated time. Reliance was placed on condition no.9 of the terms and conditions on which the shops were to be allotted which are at exh.41, in support of these contentions. It was also argued that since the shops were not handed over within the stipulated period of one year, the appellants were entitled to claim damages for the period subsequent to the expiry of that one year from the date of auction i.e. from 21.6.1988 till the possession was handed over. It

is stated that the possession was handed over in the year 1990 after filing of the suit. The learned counsel for the appellants further argued that time was the essence of the contract and since the construction of the shops was not done as stipulated, the Municipality had committed breach of the contract entitling the appellants to claim damages.

Admittedly, the auction of the suit shops took place on 21.6.1987 after a public advertisement. The shopping centre was to be constructed by the respondent Municipality on a plot of land which was opposite Shalimar Shopping Centre. There was no mistake as regards the identity of the plot on which the shopping centre was to be erected. The appellants had put up their bids knowing that the land belonged to the State Government and not to the Municipality. There was no stipulation in the terms and conditions which are at exh.41 regarding the Municipality getting the title over the land cleared before constructing the shopping centre or before allotting the shops. The appellants have, by offering their bids, agreed to take the shops which were to be constructed in the shopping centre which was to be built on the land in question. No question regarding title seems to have been raised at the time when the appellants put up their bids. The question is raked up much latter when the suit notice for filing of the suit was given before filing of the suit in April-1990 after parties were served with the notice by the Municipality on 19.2.1990 requiring them to pay up the remaining amount and to take over the possession after getting requisite documents executed on a stamp paper. This fact of the notice having been given on 19.2.1990 has been stated in the plaint itself in para-7. On the basis of the evidence on record, the trial Court rightly concluded that the appellants had taken part in the public auction with the knowledge that land on which the construction was to be made, was owned by the State Government and that they were bidding for the shops only which were to be given to them by charging licence fees. It was not the part of the bids which were put up by the appellants that the land should be got transferred to itself by the Municipality from the State Government. It transpires from the deposition of Mr. Vanza at exh.112 that the construction of the building in question was started in the year 1987 and was completed in the year 1988. He has stated that no other conditions except those which were specifically set out in exh.41, were agreed upon between the Municipality and the bidders. As per the evidence adduced on behalf of the Municipality, the land on which the disputed building was constructed, was originally owned by the State Government, but there was an

understanding between the Municipality and the State Government to exchange their plots of lands and accordingly the officials of the Municipality and the State Government had met on 15.1.1987 and possession of the said land was handed over by the State Government to the Municipality in exchange of the land of the Municipality. It thus transpires that the Municipality had advertised construction of the shopping centre after getting the possession of the land in question as decided in the meeting which took place between the Collector, Deputy Town Planning Commissioner and the Chief Officer of the Municipality. Even the Deputy Mamlatdar from the Collector's office who has deposed at exh.140, has asserted that a meeting had taken place on 15.1.1987 and as per the decision reached therein, the land in question was handed over to the Municipality and the resolution which is at exh.143, was passed. The resolution exh.143 shows that a decision was reached on 15.1.1987 to exchange the plots of land mentioned therein. Letter exh.126 written by the City Survey Superintendent, Bharuch to the Chief Officer of Bharuch Municipality shows that pursuant to the said decision reached on 15.1.1987, a request was made to take over the possession of the disputed plot. Therefore, the decision which was reached was in fact implemented and the Municipality was in possession of the land on which it declared construction of a shopping centre. No objection was ever raised by the State Government in respect of putting up of a shopping centre which was announced by a public advertisement given in the news paper. The shopping centre was admittedly constructed by the Municipality and it is in that shopping centre that the shops were allotted. There was absolutely no stipulation to get the titles of the land cleared as alleged by the appellants. The appellants could not have pitched their claim so high as to seek a direction of getting title of the land cleared when the Municipality had publicly proclaimed of putting up a shopping centre on the land which it had taken by the State Government in exchange of its plot and it was entirely for the bidders to choose whether they should join the scheme or not. The appellants knowing fully well that the land originally belonged to the State Government, offered their bids on the terms and conditions which were contained in exh.41 and it is not open to them to superimpose any further condition regarding the title of the land. Admittedly, they have taken the possession of the shops in question which were allotted to them. There is, therefore, no substance in the contention that the Municipality should get the title of the land cleared so as sought to be suggested on behalf of the appellant.

The contention that the appellants are entitled to the damages is based on condition no.9 of the terms and conditions which are at exh.41. As per that condition, shop nos. 1 to 25 were to be constructed in about 9 months' time and rest of the shops were to be constructed in a year. As per condition no.18, the bid amount was to be paid in four equal installments. The first instalment of 1/4th of the amount was to be paid by 30.6.1987, the second by 30.9.1987 and the third by 31.12.1987. The fourth and the last instalment of the 1/4th of the bid amount was to be paid by 31.3.1988 or on the date on which the possession of the shop was to be handed over. This stipulation regarding the payment of the last instalment would suggest that if the shop is not handed over by 31.3.1988 and is handed over thereafter, the fourth instalment was not required to be paid by 31.3.1988 and had to be paid only when possession of the shop was handed over. The combined reading of condition nos. 9 & 18 clearly shows that only estimated time of completing construction was indicated while stating that the shops were to be constructed in about 9 months' time or in a year and it was not stipulated that the possession will be given on or before the stipulated date. On the contrary, there was as stipulation as noted above that the last instalment was to be paid only when the possession was to be given and if the possession was not given by 31.3.1988, it was not required to be paid by that time. This implies that it was stipulated that there could be delay in handing over the possession beyond the period which was estimated for constructing the shops. The terms and conditions exh.41 indicate that as stipulated in condition 10, the amounts which were to be paid by installments were by way of donations towards the construction of the building. The appellants have agreed to this stipulation. Since the time was not the essence of the contract as rightly held by the trial Court, there is no question of the appellants' claiming any loss of interest on the amounts which were deposited as per the stipulations contained in exh.41. We, therefore, find ourselves in complete agreement with the reasoning and findings of the trial Court and dismiss both the appeals summarily.

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